

DRAFT TEMPLATE FOR COMMENT

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**REQUEST FOR EVIDENCE
I-129 O-2 Artist or Athlete**

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REQUEST FOR EVIDENCE

O-2 Alien Accompanying an O-1 Alien Artist or Athlete of Extraordinary Ability

You have filed Form I-129, Petition for Nonimmigrant Worker, seeking O-2 nonimmigrant classification for (insert beneficiary/beneficiaries name/s). You, (insert organization name, agent name, etc.), seek to employ the beneficiary/beneficiaries as (position title).

An O-2 classification applies to individuals who accompany and provide essential support to an O-1 artist or athlete. The O-2 cannot work separate and apart from the O-1 individual to whom he or she provides support. This classification must be filed in conjunction with the services of the O-1 alien.

To process your petition and determine if the beneficiary/beneficiaries is/are eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence that is believed to satisfy the request.
- Explain how the evidence in the record already establishes eligibility
- Request a decision based on the record.

Note, however, that you are responsible for providing evidence that establishes that the beneficiary/beneficiaries meet all requirements. Evidence must show that both you and the beneficiary/beneficiaries were eligible for the requested benefit when you filed Form I-129.

Status of the Principal Athlete or Artist

Accompanying support workers provide support to athletes or artists who are also known as “principals.” A petition for classification as an accompanying support worker may be filed while the Form I-129 petition is pending for the principal. However, the principal must be approved prior to the approval of the accompanying support worker.

Please provide evidence to show that Form I-129 was filed for the principal athlete or artist. Evidence you may submit includes but is not limited to:

- Form I-797, Receipt Notice, showing the name of the principals with whom the accompanying support worker will work; or
- Form I-797, Approval Notice, showing the name of the principals with whom the accompanying support worker will work.

Request for Translations

All foreign language documents must have a complete English translation to establish eligibility. This includes any documents you submit in response to this Request for Evidence.

You submitted documents which are in a language other than English. In order for USCIS to consider this evidence, you must submit English language translations for each document. The translator must certify that:

- The translations are accurate and complete; and,
- He or she is competent to translate from the foreign language into English.

General Requirements for all O Nonimmigrant Petitions

In general, petitions seeking O-1 nonimmigrant classification must include the following:

- Copies of contracts;
- A description of the competition(s), event(s) or performance(s); and
- A consultation.

To satisfy these requirements, your organization submitted:

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-
- (list submitted evidence).

[NOTE TO ISO: In the following sections, only address those requirements where the documentation submitted by the petitioner was insufficient to establish that the requirement has been met. Delete any requirements that appear to have been met]

Contracts. All petitions seeking O nonimmigrant classification must be supported by a copy of a written contract. If a written contract does not exist, submit a summary of the terms of the oral agreement between you and each performer listed in the petition. [Note to ISO: If a U.S. agent is filing, go to the Agent section for the specific contract requirements.]

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

-OR-

The contract you submitted is insufficient to establish eligibility. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy the requirements as specified below.

Written contracts or the summary of the terms of an oral agreement must specify the terms and conditions of employment. They must:

- Specify the wage offered and explains the terms and conditions under which the beneficiary will perform these services; and
- Detail any additional services provided.

Nature of the Event or Engagement. All petitions seeking O nonimmigrant classification require an explanation of the competition, event, or performance in which the beneficiary will participate. An event means an activity such as a scientific project, conference, convention, lecture series, academic year, or engagement during the requested validity period. If you are filing for an O-1 athlete, a copy of the contract may satisfy this requirement.

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

-OR-

The description you submitted is insufficient. (ISO should explain why the evidence submitted is insufficient to establish eligibility – refer to definition at 8 CFR 214.2(o)(3)(ii).) You may still submit evidence to satisfy this requirement.

The description must include:

- An explanation of the nature of the event or activities;
- Beginning and ending dates of the events or activities; and
- A copy of any itinerary that shows dates, name(s) of the employer(s) or sponsor(s), and location of the event.

Consultation. All petitions seeking O nonimmigrant classification must include a written advisory opinion from a U.S. peer group in the area of the beneficiary's ability. The U.S. peer group may include a person or persons with expertise in the field, labor, or management organization.

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

-OR-

The consultation you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) A new consultation may be submitted which meets the requirements specified below.

A consultation is a written advisory opinion regarding the nature of the work and the

beneficiary's qualifications. The advisory opinion must state:

- The beneficiary's ability and achievements in the field of endeavor;
- The nature of the duties to be performed; and
- Whether the position requires the services of an alien of extraordinary ability.

The written opinion should contain a statement of facts that support the conclusion reached in the opinion and must be signed by an authorized official of the group or organization. A consulting organization may submit a letter of no objection if it has no objection to the approval of the petition.

Specific Requirements

In order for the beneficiary/beneficiaries to qualify for the O-2 classification, you must establish beneficiary/beneficiaries is/are:

- Coming to the United States to assist in the performance of the O-1 alien; and
- Has/Have critical skills and experience with the O-1 alien which is not of a general nature; and
- Has/Have skills which are not possessed by a U.S. worker.

To satisfy these requirements your organization submitted:

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-
- (list submitted evidence).

[NOTE TO ISO: In the following sections, only address those requirements where the documentation submitted by the petitioner was insufficient to establish that the requirement has been met. Delete any requirements that appear to have been met]

Critical Skills and Experience with the O-1 Artist or Athlete:

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

-OR-

The evidence you have submitted is insufficient. (ISO should explain what evidence was

submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this requirement.

Evidence may include, but is not limited to:

- Newspaper articles;
- Trade publications;
- Proof of wages paid to the beneficiary(ies) by the same employer as the O-1;
- Passport pages showing the beneficiary and the O-1 traveled together in the past; and/or
- Photographs of the beneficiary with the O-1 alien.

Additionally, you must establish that the beneficiary's/beneficiaries' skills and experience are not of a general nature and not possessed by a U.S. worker.

Evidence may include, but is not limited to; letters from individuals or organizations with expertise in the beneficiary's field of endeavor that:

- Describe the beneficiary's critical skills and experience with the O-1 alien;
- Describe the nature of the duties to be performed; and
- Explain why a U.S. worker could not perform the stated duties.

A consultation is a written advisory opinion regarding the nature of the work and the beneficiary's/beneficiaries' qualifications. The advisory opinion must state:

- The alien's essentiality to and working relationship with the O-1 artist or athlete;
- State whether there are available U.S. workers who can perform the support services.

The written opinion should contain a statement of facts that support the conclusion reached in the opinion and must be signed by an authorized official of the group or organization.

A consulting organization may submit a letter of no objection if it has no objection to the approval of the petition

Agents

Petitions for O-1 nonimmigrants may be filed by a:

- U.S. employer;
- U.S. agent;
- A foreign employer through a U.S. agent.

U.S. Agents. It appears that you are a U.S. agent filing this petition. You must provide evidence to establish the relationship between you and the relevant parties, showing that you will:

- Perform the function of an employer;
- Represent the beneficiary and multiple employers with whom the beneficiary is contracted to work; or
- Represent a foreign employer.

Agents performing the function of an employer must submit:

- A written contract between you and the beneficiary that:
 - Specifies the wage offered and other terms of employment; and
 - Details any additional services provided.
- An itinerary of definite employment and information on any other services planned for the intended employment dates.

Agents representing both the beneficiary and one or more employers must submit:

- Evidence that the agent is authorized to act as an agent on behalf of the beneficiary and all of the entities with whom the beneficiary is contracted to perform the services;
- Contracts between the beneficiary and the entities with whom the beneficiary will perform services, explaining terms and conditions of employment;
- A complete itinerary of services or engagements that:
 - Specifies the dates of each service or engagement;
 - Provides the names and addresses of the entities with whom the beneficiary is contracted to perform the services; and
 - Provides the names and addresses of the establishments, venues or locations where the services will be performed.

Foreign Employers. It appears that you are a U.S. agent filing this petition on behalf of a foreign employer. You must submit evidence that shows you are authorized to:

- File the petition; and
- Accept service of process on behalf of the employer.

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement

-OR-

The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this requirement.

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